



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: American Overseas Book Co., Inc.

File: B-266297

Date: February 9, 1996

Cicely P. Marks for the protester.

Janice E. McIntyre for The Faxon Company, Inc., the interested party.

Terrence J. Tychan, Department of Health & Human Services, for the agency.

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DIGEST

1. Agency's determination that protester's initial proposal was technically unacceptable and outside the competitive range was reasonable where the proposal would require major revisions in order to become acceptable.
 2. Protester whose proposal was properly found technically unacceptable and excluded from the competitive range is not an interested party to challenge the award, where there is another technically acceptable proposal within the competitive range, since the protester would not be in line for award if its protest were sustained.
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DECISION

American Overseas Book Company, Inc. (AOBC) protests the exclusion of its proposal from the competitive range, and the subsequent award of a contract to The Faxon Company, Inc., under request for proposals (RFP) No. 263-95-P-(AL)-0019, issued by the Department of Health and Human Services (HHS) for subscription services to domestic and foreign serial publications and periodicals for users of the National Institutes of Health libraries. The protester contends that HHS' determination to exclude AOBC's proposal from the competitive range was unreasonable, and that the subsequent award to Faxon at a higher price than AOBC proposed was improper.

We deny the protest.

The RFP sought proposals for a fixed-price, indefinite delivery/indefinite quantity contract for a 12-month base period of performance, with up to four 1-year option periods. For each contract period, offerors were required to submit fixed unit and extended prices for all items listed in section B of the RFP and a total price. Offerors were required to submit separate technical and business (price) proposals.

Section M of the RFP explained that proposals would be point-scored in accordance with the following technical evaluation criteria: (1) organizational experience (38 points); (2) technical approach (30 points); and (3) personnel qualifications (12 points), for a maximum possible technical score of 80 points. The RFP explained in detail the type of information that HHS would consider under each criterion. The RFP warned offerors to submit sufficient information to allow HHS to evaluate their proposals in accordance with the detailed criteria listed in the RFP. Price was to be evaluated by assigning the maximum number of points available (20 points) to the proposal with the lowest total evaluated price (including options), and proportionately lower scores to higher-priced proposals. Technical proposals were to receive "paramount consideration" in the award. Award was to be made to the offeror whose proposal was most advantageous to the government.

Five firms, including the protester, responded to the RFP. A technical evaluation panel (TEP) evaluated proposals in accordance with the evaluation scheme announced in the RFP, with the following results (point scores shown are rounded off):

Offeror	Point Scores Technical	Evaluated Price	Price
Faxon	73	19	\$33,279,658
B	68	19	\$33,672,408
C	51	18	\$34,863,908
D	54	0	(no price)
AOBC	39	20	\$31,809,533

The TEP found Faxon's and offeror B's proposals acceptable, while offeror C's, D's and AOBC's proposals were found technically unacceptable. Based on those results, the contracting officer retained the proposals submitted by Faxon and offeror B within the competitive range; conducted discussions with only those two offerors; and requested best and final offers (BAFO) from those two firms.

Although the TEP reevaluated proposals based on BAFOs, there was little change in the final scores. Faxon's final technical score remained unchanged and its price (which remained unchanged following discussions), was assigned the maximum number of points available (20); offeror B's final technical score improved to 71 points, and its price earned a score of 19.7 points. The TEP concluded that both Faxon and offeror B could satisfy the requirement. On September 8, the contracting officer awarded the contract to Faxon. This protest followed.

AOBC argues that HHS' decision to eliminate its proposal from the competitive range was unreasonable. The protester also contends that award to Faxon was improper.

An offeror must submit an initial proposal that is adequately written and that affirmatively establishes its merits or run the risk of having its proposal rejected as technically unacceptable. Source AV, Inc., B-234521, June 20, 1989, 89-1 CPD ¶ 578. Offers that are technically unacceptable as submitted and would require major revisions to become acceptable are not required to be included in the competitive range for discussion purposes. W.N. Hunter & Assocs.; Cajar Defense Support Co., B-237259; B-237259.2, Jan. 12, 1990, 90-1 CPD ¶ 52. In reviewing whether a proposal was properly rejected as technically unacceptable for informational deficiencies, we examine the record to determine, among other things, whether the RFP called for detailed information and the nature of the informational deficiencies, for example, whether they tended to show that the offeror did not understand what it would be required to do under the contract. BioClean Medical Sys., Inc., B-239906, Aug. 17, 1990, 90-2 CPD ¶ 142; DRT Assocs., Inc., B-237070, Jan. 11, 1990, 90-1 CPD ¶ 47. We will not reevaluate a proposal but, rather, will consider only whether the agency's evaluation was reasonable and consistent with the evaluation scheme in the RFP. Communications Int'l, Inc., 69 Comp. Gen. 553 (1990), 90-2 CPD ¶ 3. We have reviewed the individual evaluators' sheets and the TEP's narrative explanation and find that the evaluators reasonably concluded that AOBC's proposal was technically unacceptable.

Section L of the RFP established the acceptable minimum requirements for the format and content of technical proposals. The RFP specifically instructed that technical proposals must contain sufficient information so as to allow the TEP to evaluate the offeror's understanding of the scope of work. Specifically, under a section entitled "Technical Proposal Instructions," offerors were instructed to respond to each of the evaluation criteria listed in the RFP with specific, detailed information. For instance, offerors were instructed to provide references to "similar or related" contracts and to describe in their proposals "all work being carried out by your organization which is closely related" to the work covered by the RFP. Further, the RFP instructed offerors to submit detailed information explaining their technical approach, including sufficient information demonstrating their understanding and management of the tasks required by the RFP. The RFP's instructions were similarly detailed with respect to the type of information the agency required to assess proposals under the "personnel qualifications" criterion.

The record shows that the TEP identified several informational deficiencies in AOBC's technical proposal, leading the evaluators to conclude that AOBC had failed to demonstrate awareness and understanding of the complexities of the contemplated contract. As a result, the protester's proposal was downgraded under all evaluation criteria. In addition to being downgraded for informational

deficiencies, AOBC's proposal was downgraded because the firm lacked corporate experience with contracts similar in size and scope. In this connection, the TEP found that while the protester had tailored its database to support the requirements of the library system of another customer of AOBC (another government agency), that agency's requirements differ in size and scope from the HHS requirements reflected in the RFP.

The TEP also found that the protester's proposal showed limited automation capability. For instance, the evaluators found that sample automated claim reports AOBC submitted with its proposal were "very difficult to read" and lacked sophistication. Also, several evaluators noted that while AOBC made certain claims in its proposal concerning its electronic transaction capabilities, AOBC had not included sufficient information in its proposal to support its alleged capabilities. The evaluators further noted that AOBC's proposed software had been developed and written using software language unrecognizable by any of the TEP members.¹ The TEP also found that AOBC could not transmit claims to publishers electronically. In summary, the TEP concluded that these were significant weaknesses that rendered AOBC's proposal unacceptable and not susceptible of becoming acceptable through discussions with the firm.

Based on our review of the record, we think that the TEP reasonably concluded that AOBC failed to follow the RFP's clear, specific instructions and that the information the firm did provide was insufficient to show that AOBC understood the requirements and the complexities of the contemplated contract. Accordingly, we have no basis to question the TEP's conclusion, based on these findings, that AOBC's proposal was unacceptable.

With respect to several of the weaknesses identified in its proposal, AOBC's arguments suggest that the agency should have inquired further so as to permit the firm to clarify various statements throughout its proposal. As stated above, however, agencies are not required to conduct discussions with a firm that submitted a proposal that requires major revisions to become acceptable. The record shows that the evaluators reasonably regarded AOBC's proposal as containing deficiencies of sufficient magnitude that major revisions would have been required to make the proposal acceptable. Under these circumstances, we have no basis to object to the agency's decision to exclude AOBC's proposal from

¹Also of concern to the TEP was the "tone" of AOBC's proposal. In this regard, several evaluators noted that AOBC was generally critical of the RFP's requirements and of the agency's approach. This led the TEP to conclude that either AOBC did not understand the requirements, or that the firm was reluctant or unwilling to accept the responsibilities contemplated by the RFP.

the competitive range. See Engineering & Computation, Inc., B-258728, Jan. 31, 1995, 95-1 CPD ¶ 155.

AOBC further argues that in evaluating proposals, the TEP applied unannounced evaluation criteria. AOBC contends that its proposal was improperly downgraded due to its claims processing approach, computer software capability, and its failure to provide information on the educational backgrounds of proposed key personnel. According to the protester, AOBC's low technical score was the result of the TEP's application of evaluation criteria not specifically identified in the RFP.²

While solicitations must identify the major factors that the agency intends to consider in the evaluation of proposals, they need not identify the areas under each factor that might be considered in the evaluation, if the unidentified areas are reasonably related to or encompassed by the stated evaluation criteria. Drytech, Inc. B-246152.2, Feb. 24, 1992, 92-1 CPD ¶ 217. Here, we have reviewed the protester's allegations and cannot find any basis for concluding that the TEP applied criteria not reasonably related to the evaluation factors announced in the RFP.

Under the "technical approach" factor, for example, the RFP stated that the TEP would evaluate the offerors' "demonstrated ability" to provide "fast, reliable service in order placement," and "handling of claims." The RFP also required offerors to explain how they would provide various electronic services and contained specific computerization requirements. Given these requirements, we think that the TEP reasonably considered AOBC's software capabilities and its claims processing approach. Further, contrary to AOBC's contention, we think that the "personnel qualifications" criterion contemplates that the TEP would assess the relevant experience of proposed key personnel, including their educational backgrounds.

The fact that AOBC's proposal was significantly downgraded in these areas does not mean that the TEP applied unannounced evaluation criteria. Rather, as already explained, the record shows that based on its assessment of AOBC's proposal, the TEP reasonably concluded that the protester had submitted insufficient information to show that it could meet the RFP's requirements. Accordingly, we have no basis to question the TEP's conclusion that AOBC's proposal was technically unacceptable.

²AOBC also takes issue with the composition of the TEP. The composition of an evaluation panel, however, is a matter within the contracting agency's discretion, which we will not review absent a showing of possible fraud, bad faith, conflict of interest, or actual bias. Southeast Medical Alliance, B-242034, Dec. 17, 1990, 90-2 CPD ¶ 495. AOBC has not made any such showing.

With respect to AOBC's challenge to the award to Faxon, under our Bid Protest Regulations, a party is not interested to maintain a protest if it would not be in line for award if the protest were sustained. See 4 C.F.R. § 21.0(a) (1995). Since HHS reasonably found AOBC's proposal technically unacceptable and properly excluded the protester's proposal from the competitive range, and since offeror B's acceptable proposal remained in the competitive range, AOBC is not an interested party to challenge the award to Faxon. See Dick Young Prods. Ltd., B-246837, Apr. 1, 1992, 92-1 CPD ¶ 336.

The protest is denied.

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